

## EXHIBIT 5

**CRIMINALISTICS LABORATORY**  
 Sheriff's Office Contra Costa County  
**REPORT OF LABORATORY EXAMINATION**

Laboratory Number  06-9725-1	Offense(s)  Officer Involved Incident	Date(s) Examined  8/15- 8/18/06
Requesting Agency & Case Number  CCCSO 06-21451/ Pittsburg PD 06-6425	Date of Request  R1 8/15/06	Examinations Requested By  CCCSO S. Pate/ PPD A. Deplitch
Complainant(s)  Patzer, J./ Vorhauer, J.	Subject(s)  Day, Steffen	

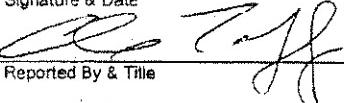
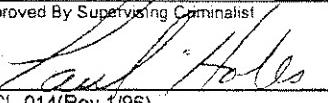
**REPORT OF FIELD SERVICES**

On August 15, 2006, at approximately 2:15 AM, I was contacted by Sheriff's Dispatch to process the scene of an Officer Involved Shooting in Pittsburg. Criminalist J. Kwast was assigned to assist. We arrived at 36 Galleon Way at approximately 3:30 AM and met with Lt. J. Mahoney. Also present were numerous Sheriff's Office, Pittsburg PD, and DA's Office Personnel.

Lt. Mahoney briefed us about the circumstances of the case as they were understood at the time. Deputies in a marked CCCSO Patrol Vehicle followed the black Ford Mustang and believed that the driver may have been drunk. The vehicle pulled into the driveway of 36 Galleon Way and the driver ran away. Deputy Patzer pursued the driver, while Deputy Vorhauer remained with the two passengers of the vehicle. Day reportedly confronted Deputy Patzer in the backyard of 26 Galleon Way. After a struggle, in which Patzer's head was reportedly hit against an air conditioning unit, a single shot was fired. Day was reportedly hit once in the abdomen and succumbed to his wound at the hospital.

36 Galleon Way was a single family residence in a residential neighborhood. A black Ford Mustang, CA license 5EVC877, was parked in the driveway of the residence. The driver's door was open and the engine was on. There were no keys in the ignition and the vehicle appeared to have been hot-wired. The driver's window was broken. Diced glass fragments were noted on the driver's floor. No broken glass was found on the driveway, however, indicating that the window had been broken elsewhere. The trunk key latch was missing and the trunk could not be opened. A search of the interior of the vehicle revealed numerous tools and stereo equipment in the back seat area and a large speaker was filling most of the trunk space.

Two baseball caps and a cellular telephone were on the driveway near the passenger side of the vehicle. A metal scribe tool was on the driveway near the driver's side of the vehicle. Items recovered from the roof of the vehicle included keys, tools, a stereo face plate, and a rock. A black leather wallet was found on the passenger side windshield wiper of the Mustang.

Signature & Date   8/15/06	Distribution  Pittsburg PD- 1 Records- 1 File- 1
Reported By & Title  Alex Taflya, Criminalist	
Approved By Supervising Criminalist   9/25/06	For Additional Information Call (925) 335-1600

Copy of report w/notes to DNA Invest merchaca 10/23/06 mme

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Two Contra Costa County Sheriff's Patrol Vehicles and a Pittsburg PD K9 Patrol Vehicle were parked in the street in front of 36 Galleon Way. The Pittsburg PD Vehicle, parked along the curb in front of the residence, and CCCSO Patrol Vehicle 2630, parked in the street across from the residence, reportedly responded as assist units, and arrived after the incident. CCCSO Patrol Vehicle 2611 had reportedly been driven by Deputy Vorhauer, with Deputy Patzer as a passenger. The vehicle was parked eastbound in the street across from 36 Galleon Way, with its engine, roof-mounted takedown lights, and spotlights on.

Patzer reportedly chased Day over a wall between 36 and 30 Galleon Way. A cinderblock wall divided the front yards of the two residences. A wooden bench was in the front yard of 36 Galleon Way, along the west side of the cinderblock wall. The bench appeared to be aged and one of the seat slats was broken. A plant lining the wall on the east side of the fence appeared to have some recent damage. Several leaves and small branches appeared to have been broken. Based on the broken slat and branches, the bench appeared to have been used to scale the fence. No tracks or additional evidence were noted in the grass or paved areas between 30 and 26 Galleon Way. Therefore, it could not be determined where the chase took place between the cinderblock wall and the backyard of 26 Galleon Way. Refer to Figure 1 for an overall scene diagram.

26 Galleon Way was located two houses east of 36 Galleon Way, on the same side of the street. A wooden gate on the east side of the residence led to the backyard. Numerous items, including a bicycle, extension cord, garden tools, buckets, and empty water bottles, were located a short distance behind the gate. Many of these items had reportedly been moved by EMS in order to allow access into the yard. Several additional empty water bottles were lying on the ground near the wall of the residence.

A single 9-millimeter cartridge case was recovered from the crossbar of the fence leading into the backyard of 26 Galleon Way. The cartridge case was located approximately 83 inches east of the residence's wall, at a height of approximately 59 inches. No additional cartridge cases or bullets were found in the side yard.

A window-mounted air conditioning unit was near the gate entry into the yard. It was located approximately 32 inches north of the gate and extended approximately 15 inches away from the wall. The air conditioner was not level; the end furthest from the wall dipped downward. The lowest edge was approximately 41 inches from the ground. The air conditioner unit was approximately 23 inches wide and 16 inches tall. No blood was noted on any of the surfaces of the air conditioner.

Three shirts with apparent bloodstains were recovered from the side yard. The shirts were lying together in an area approximately 200 inches north of the fence line and 36 inches east of the wall. A small area of pooled apparent blood was located approximately 135 inches north of the fence line and 15 inches east of the wall. This was the area where Day had reportedly been lying. Refer to Figure 2 for a diagram of the side yard of 26 Galleon Way.

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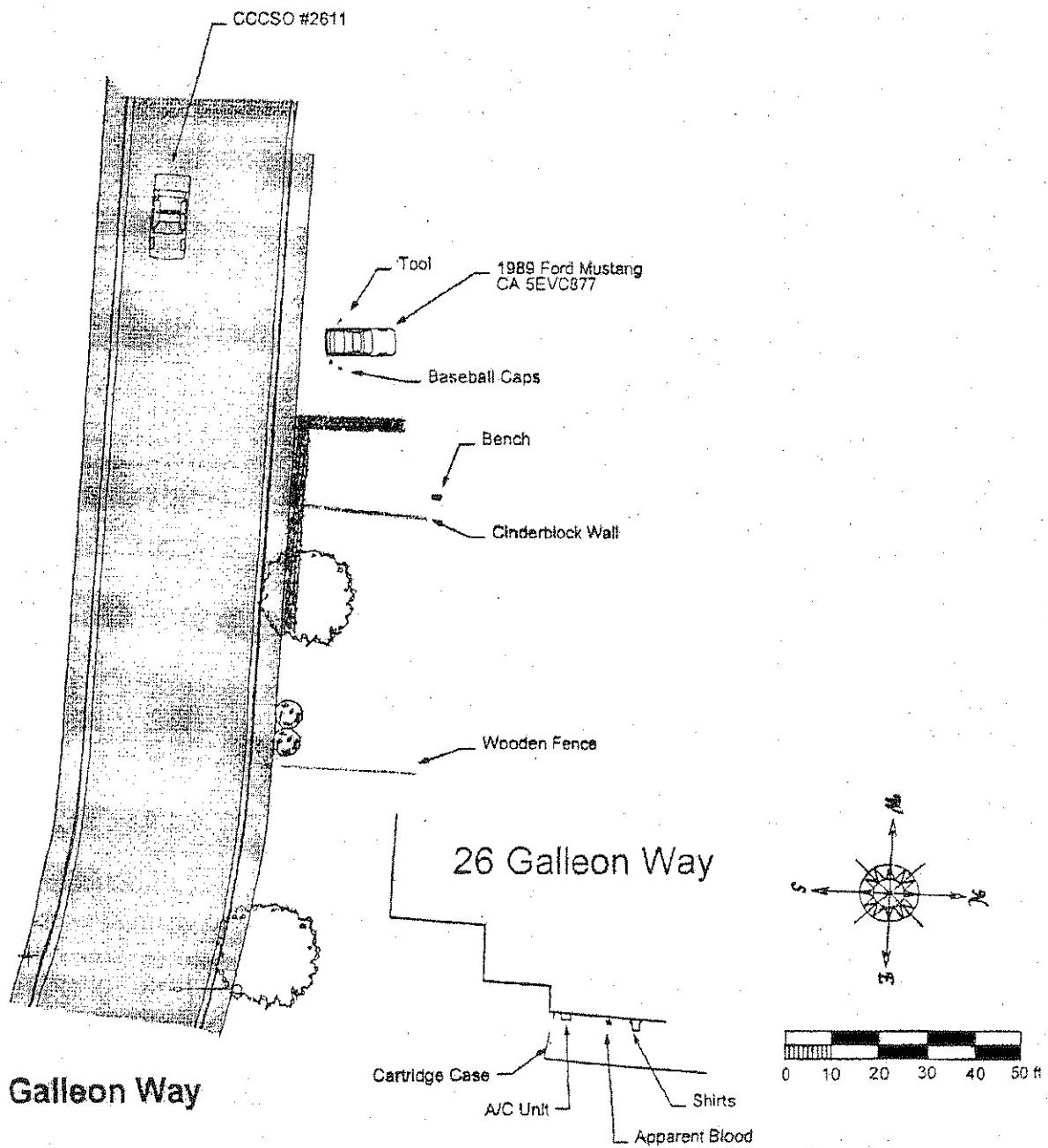


Figure 1. Diagram of Galleon Way

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# 26 Galleon Way

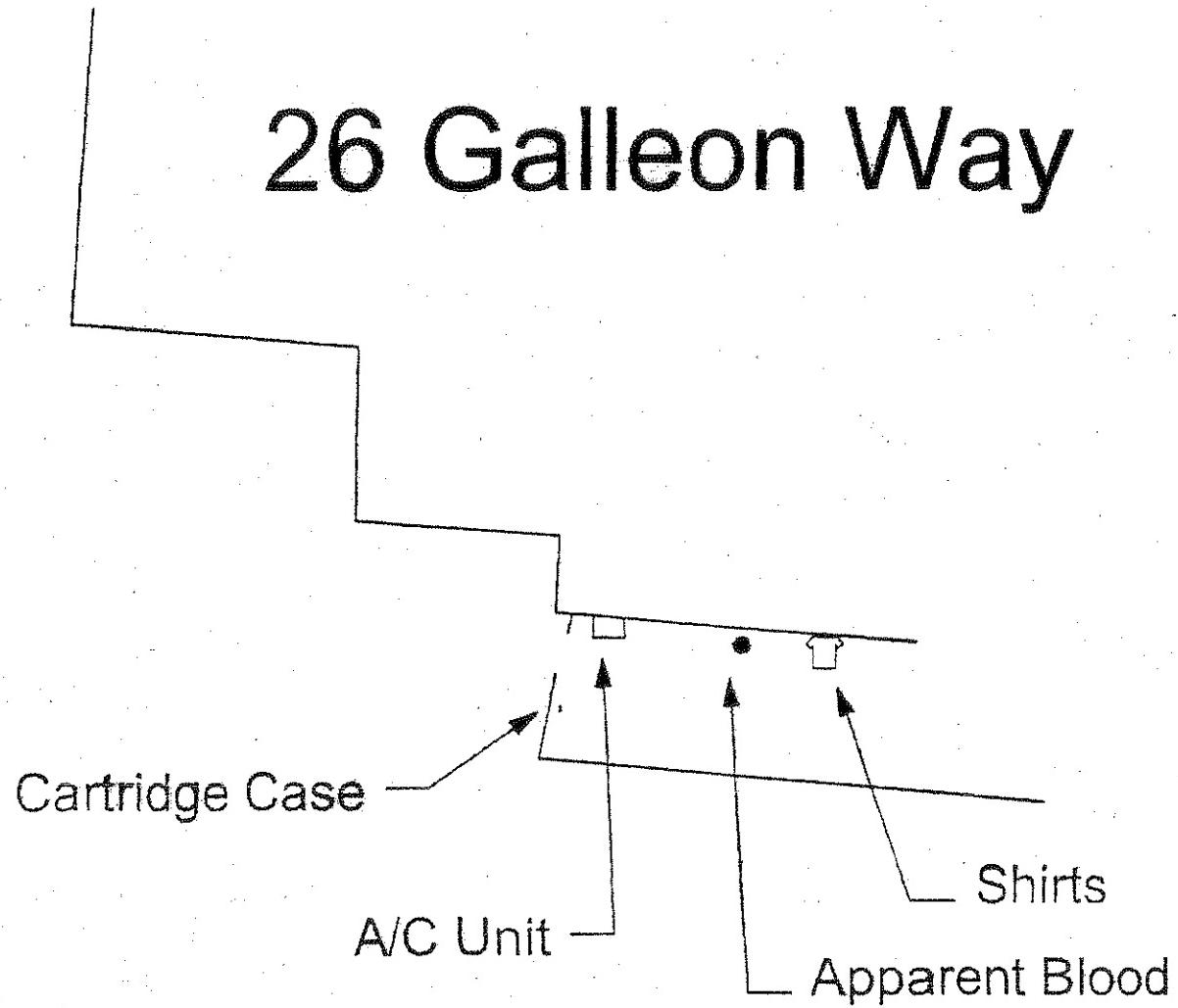


Figure 2. Diagram of side yard of 26 Galleon Way

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Kwast and I responded to Pittsburg PD to photograph Deputies Patzer and Vorhauer. Both of them were dressed in Sheriff's Office patrol uniforms. Vorhauer did not have any injuries and no damage was noted on his uniform. A GSR Kit was collected from his hands and his Smith & Wesson 5906 pistol was examined. An unfired cartridge was in the chamber and a full, 15-round magazine was loaded into the pistol. Two full, 15-round magazines were in his duty belt. No cartridges were missing from his pistol or duty belt.

Patzer had a large lump on his left temple. Several bleeding scratches and abrasions were noted on his left wrist, left elbow, right hand, and right forearm. A scrape was also noted on his right knee. An apparent bloodstain was located on the back of the left shoulder of his shirt; scuff marks were noted on the left breast pocket of the shirt; and black marks were noted on the back of the pants. A GSR Kit was collected from his hands. Patzer's duty belt, pistol, and uniform shirt were collected. Arrangements were made to collect his pants when a change of clothing would be available.

Patzer's Smith & Wesson 5906 pistol was examined. The pistol had a cartridge in the chamber and 14 cartridges in the 15-round capacity magazine. Both of the spare 15-round magazines were full. Therefore, Patzer had one cartridge less than full capacity. The pistol's barrel was slightly soiled. No apparent blood was observed on the pistol.

The scene was documented with a series of digital images, sketches, and notes. We completed processing the scene at approximately 9:00 AM and responded to the morgue. We arrived at the morgue at approximately 9:30 AM in order to allow Dr. Peterson to view Day's outer shirt. We left the morgue at approximately 10:15 AM and returned to the Laboratory.

On August 16, 2006, Criminalist C. Coleman responded to 26 Galleon Way to assist with firearms reconstruction. At this time, he collected standards from the paint on the wall near the air conditioner and fence between 30 and 26 Galleon, as possible sources for the white and red transfers on Deputy Patzer's duty belt. On August 17, 2006, I received Deputy Patzer's uniform pants, a tapelift and scraping from the cinderblock wall, and three latent lift cards from Pittsburg PD Det. E. Sanchez.

#### DESCRIPTION OF EVIDENCE:

Lab Evidence Number	Description	Location
009	WCC +P+ cartridge case	Fence crossbar, backyard of 26 Galleon Way
010	Deputy Patzer's duty belt	Deputy J. Patzer
010-01	Deputy Patzer's S&W 5906 pistol and magazines	Deputy J. Patzer's duty belt
010-02	Samples of apparent paint transfers	Deputy J. Patzer's duty belt
010-02A	White transfer from radio holder	Deputy J. Patzer's duty belt
010-02B	White transfer from handcuff holder snap	Deputy J. Patzer's duty belt
010-02C	Red transfer from bottom of handcuff holder	Deputy J. Patzer's duty belt
010-02D	Red transfer from side of holster	Deputy J. Patzer's duty belt
011	Deputy Patzer's duty shirt	Deputy J. Patzer
011-01	Swabs of apparent blood and controls	Deputy J. Patzer's duty shirt

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Lab Evidence Number	Description	Location
011-02	Sample of substance on left breast pocket	Deputy J. Patzer's duty shirt
012	Two Gunshot Residue Kits	Deputies J. Patzer and J. Vorhauer
013	Apparent blood on grass	Side yard of 26 Galleon Way
014	Items collected near and on Ford Mustang	Driveway of 36 Galleon Way
014-01	SF Giants baseball cap	Driveway near passenger side of car
014-02	Oakland A's baseball cap	Driveway near passenger side of car
014-03	Nokia cellular telephone	Driveway near passenger side of car
014-04	Metal scribe tool	Driveway near driver's side of car
014-05	Black leather wallet	Passenger windshield wiper of car
014-06	Keys	Passenger side of roof of car
014-07	Electronic scale	Passenger side of roof of car
014-08	Screwdriver, rock, and key	Driver's side of roof of car
014-09	JVC radio faceplate	Driver's side of roof of car
015	Items collected by Deputy O'Brien	Day's clothing
016	Three shirts with apparent bloodstains	Side yard of 26 Galleon Way
016-01	White T-shirt	Side yard of 26 Galleon Way
016-02	Black T-shirt	Side yard of 26 Galleon Way
016-03	Gray tank top	Side yard of 26 Galleon Way
017	Paint standards	Wall and fence of 26 Galleon Way
018	Deputy J. Patzer's uniform pants	Deputy J. Patzer
019	Tapelift and scraping from wall	Cinderblock wall between 36 and 30 Galleon way
020	Three latent lift cards	Doors and vehicle
021	5 Mini CDs containing digital images, CAD diagrams, and a video tape from Pittsburg PD Officers	

- Two CDs containing 270 digital images
- One CD containing images and CAD diagrams from Pittsburg PD (Consolidated from mini CDs, LE 021)

#### EXAMINATIONS CONDUCTED DURING INVENTORY:

Lab Evid 010      Deputy Patzer's duty belt was examined visually and with the aid of a stereomicroscope. No blood was observed on the belt or keepers. White apparent paint transfers were noted on the radio holder and the handcuff case closest to the radio holder. Red apparent paint transfers were noted on the holster and bottom of the handcuff case closest to the holster. Samples of the apparent paint transfers were collected.

Lab Evid 011      Deputy Patzer's short-sleeved, uniform shirt was examined visually. A white stain on the left breast pocket was examined with a stereomicroscope. The stained area appeared to be composed of a powdery substance, not paint. A similar, but smaller,

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stain was noted on the abdominal area of the shirt. A sample of the substance was collected. The cinderblock wall may be a source for these stains.

A contact transfer of apparent blood was located on the back of the left shoulder area of the shirt. The stain was on the exterior surface only and tested positive with a presumptive chemical test for blood. A sample of the apparent bloodstain was collected.

- Lab Evid 018 Deputy Patzer's uniform pants were examined visually. They had grass and dirt stains on the shin areas and knees of both pant legs. A black scuffed area was noted on the back of the lower, left pant leg.
- Lab Evid 014-03 The Nokia cellular telephone recovered from the driveway, near the passenger side of the Mustang, was missing its back plate. The telephone had Metro PCS service and displayed 9 missed calls and 5 new messages. I scrolled through the menu in an attempt to locate the telephone number, but could not locate it. The opening screen read "ON TOP OF IT AND OFF OF ONE"
- Lab Evid 014-05 The black leather wallet recovered from the windshield wiper was almost empty. It contained a photograph of two young children and a Spanish-language religious insert.
- Lab Evid 014-07 The electronic scale recovered from the passenger side of the Mustang's roof had several white crystals within the case and below the weigh pan.
- Lab Evid 015 Items collected by Deputy P. O'Brien included two cellular telephones, an electronic scale, a lighter, a glass pipe, a woman's watch, an almost empty pack of Newport cigarettes, an electronic switch, and DMV paperwork. The paperwork included an interim driver's license for Michael David Johnson, 3951 Los Arabis Drive, Lafayette CA 94549. The driver's license, number B6290511, had been issued on July 28, 2005.
- One of the cellular telephones was an LG telephone with Metro PCS service. The telephone opening screen read "1 OF A KIND." I scrolled through the menu and found that the telephone's number was (925) 752-6518.
- The second cellular telephone was a Kyocera telephone that had a pink floral back plate and was missing its face plate. The opening screen read "\$FUKeMaLL\$" and no telephone number could be found in the menu.
- Lab Evid 016-01 The white "AKS Plaza de Toro Jeans Bro" size 2XL T-shirt was examined visually. The shirt had been cut by EMS and based on photographs taken at the scene by Pittsburg PD Officers, was the exterior most layer of shirts worn by Day. The abdominal area was saturated with apparent blood. Two holes were noted on the right side of the abdominal area of the shirt. Due to the amount of blood in the area of the holes, it could not be determined which hole was the bullet hole nor

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whether sooting was present. No damage was noted on the back surfaces of the shirt.

Lab Evid 016-02      The black T-shirt worn as the second layer of shirts by Day did not have any sizing information, but was much smaller than the white shirt. This shirt had also been cut by EMS. The abdominal area was soaked in apparent blood and a single bullet hole was located in the lower abdominal area, near the center of the shirt. No damage was noted on the back of the shirt.

Lab Evid 016-03      The gray "Fruit of the Loom" size M tank top was worn as the layer closest to the skin. The shirt was cut by EMS. A bullet hole was noted in the lower center of the abdominal area of the shirt. The surrounding area was blood soaked. Contact transfers were found along the cut leading to the neck area.

**DISPOSITION OF EVIDENCE:**

The cartridge case, LE 009, and latent lift cards, LE 020, were submitted to Central Identification Services for latent print analysis. A separate report will be issued with their findings.

The cartridge case, LE 009, Deputy Patzer duty pistol and magazines, LE 010-01, and Day's shirts, LE 016, were submitted to the Firearms Unit of the Laboratory. A separate report will be issued with their results.

The remaining evidence will be submitted to Property Services for storage, pending any requests for further analysis.

The CDs containing the digital images will be stored in the Laboratory Photograph File. Copies of the CDs were released to the Investigating Officers.